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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 GREGORY TYREE BROWN,

7 Plaintiff,

8 v.

9 RICHARD MORGAN, et al.,

10 Defendants.

Case No. C16-5975 RBL-TLF

ORDER DISMISSING CERTAIN  
DEFENDANTS, DIRECTING  
SERVICE OF CIVIL RIGHTS  
COMPLAINT, AND REFERRING  
TO MAGISTRATE JUDGE

11 This matter is before the Court on Magistrate Judge Fricke's Report and  
12 Recommendation, which recommends dismissal of certain defendants and service of the Second  
13 Amended Complaint upon the remaining defendants. The court, having reviewed the Report and  
14 Recommendation and the remaining record, does hereby find and **ORDER:**

- 15 (1) The Court adopts the Report and Recommendation.  
16 (2) Plaintiff's claims against the following defendants are **dismissed with prejudice:**

17 Ron Andering  
18 Corrections Officer Bennett  
19 Corrections Officer Boule  
20 Dave Bustonaby  
21 Sgt Cannon  
22 Sgt Card  
23 Christopher Cluever  
24 Gary Edwards  
Aaron Flack  
Gary Ford  
Sgt Fredrickson  
Gale Gleason  
Archie Grant  
Sgt Hartford  
Corrections Officer Hepler

25 ORDER DISMISSING CERTAIN DEFENDANTS,  
DIRECTING SERVICE OF CIVIL RIGHTS COMPLAINT,  
AND REFERRING TO MAGISTRATE JUDGE - 1

1 Corrections Officer Jarrell  
Ron Knight  
2 Sgt Knox  
John Lambert  
3 Mike Leahy  
Harold Lee  
4 Les Marts  
J Massaro  
5 Sgt McIntyre  
Lewis Menke  
6 Gale Munden  
Cliff Owens  
7 Sgt Patton  
Cliff Pease  
8 Sgt Penrose  
Sgt Richardson  
9 Corrections Officer Rodriguez  
Carla Schettler  
10 Lt Schneider  
Mark Shodahl  
11 Steven Sowers  
Sgt Sukert  
12 Debra Sutton  
Larry Uribe  
13 Al Walter  
Corrections Officer Winn  
14 Tana Wood  
Bill Woodley

15  
16 (3) Plaintiff's claims against the following defendants are **dismissed without prejudice**:

17 Clara Curl  
Paul Duenich  
18 Harold Kupers  
Joseph Lehman  
19 Maggie Miller-Stout  
Corrections Officer Reed  
20 Sergeant Reno  
Corrections Officer Smith  
21 Sergeant Strang

22 (4) The portions of plaintiff's claims set forth in paragraphs 173-181 of the Second  
23 Amended Complaint that rely upon conduct alleged in the previously dismissed  
paragraphs (44-111) are **dismissed with prejudice**. Any defendants named in  
24 paragraphs 173-181 who were no longer in their positions with DOC or its prisons  
as of November 21, 2013 are also subject to dismissal; however, the Second

Amended Complaint does not contain sufficient information to identify such defendants.

- (5) The following are the defendants remaining in the case. The Clerk of the Court shall conform the docket accordingly:

Terry Anderson  
Dale Caldwell  
J. Campbell  
Sandra Diimmel  
Sgt Dreyer  
Donald Duncan  
Ian Erickson  
Scott Frakes  
Roy Gonzales  
Barbara Gronseth  
Kurt Grubb  
Ron Haynes  
Dan Heaward  
Robert Herzog  
Mike Holthe  
Margo Jensen  
Larry Kincheloe  
Mary Klepps  
Corrections Officer Kvam  
Robert Moore  
Richard Morgan  
Fay Nicholas  
Mike Obenland  
Amos Reed  
Chase Riveland  
Terry Schneider-Cornish  
Bob Shaw  
Steve Sinclair  
James Spalding  
Yvette Stubbs  
Eldon Vail  
Bernard Warner  
Robert (Bob) Wright

- (5) The remaining claims are **re-referred** to Magistrate Judge Fricke.

- (6) Plaintiff's motions for orders directing service, Dkts. 27, 28 and 29, are **granted**, to the extent consistent with the terms in this Order. The Court further orders the following:

1 (a) Service by Clerk

2 Plaintiff is currently incarcerated at Clallam Bay Correctional Center (CBCC) and is  
3 subject to Mandatory Electronic E-Filing pursuant to General Orders 02-15 and 06-16. The Clerk  
4 is directed to send the following to the defendants listed below by e-mail: copies of plaintiff's  
5 Second Amended Complaint (Dkt. 14), this Order, the Court's Order Dismissing Deficient  
6 Claims (Dkt. 26), the Court's Order Granting Motion to Substitute Parties (Dkt. 35), the notice of  
7 lawsuit and request for waiver of service of summons, and a waiver of service of summons:

8 Dale Caldwell, Department of Corrections (DOC) Grievance Program Manager  
Sandra Diimmel, CBCC  
9 Sergeant Dreyer, CBCC Correctional Sergeant  
Donald Duncan, CBCC Chaplain  
10 Ian Erickson, CBCC Law Librarian Assistant  
Roy Gonzales, DOC Correctional Program Manager  
11 Kurt Grubb  
Dan Heaward, CBCC Hearings Officer  
12 Robert Herzog, DOC Deputy Secretary  
Mike Holthe, CBCC Grievance Coordinator  
13 Fay Nicholas, CBCC Correctional Guard  
Terry Schneider-Cornish, CBCC Mailroom Supervisor  
14 Steve Sinclair, DOC Secretary  
Yvette Stubbs, CBCC Law Librarian

15 The defendants shall be notified that they need not respond to paragraphs 44 through 111  
16 of the Second Amended Complaint, nor to the portions of paragraphs 173-181 that refer to those  
17 allegations, because the Court has dismissed those claims with prejudice.

18 (b) Statement by the Office of the Attorney General

19 The Office of the Attorney General of the State of Washington is directed to state  
20 whether it is authorized to accept service on behalf of the following defendants alleged to be  
21 former DOC employees and, if it is not so authorized, to file under seal their last known  
22 addresses within **thirty (30) days** of the date of this order:

23 Terry Anderson, CBCC Unit Supervisor  
24

J. Campbell, CBCC Mailroom  
Scott Frakes, DOC Deputy Secretary  
Barbara Gronseth, CBCC Law Librarian Assistant  
Ron Haynes, CBCC  
Margo Jensen, DOC Deputy Secretary  
Larry Kincheloe, DOC Secretary; WSP Superintendent  
Mary Klepps, CBCC  
Corrections Officer Kvam, CBCC Correctional Guard  
Robert Moore, CBCC Superintendent  
Richard Morgan, DOC Secretary; CBCC Superintendent; WSP Superintendent  
Mike Obenland, CBCC Superintendent  
Amos Reed, DOC Secretary  
Chase Riveland, DOC Secretary  
James Spalding, DOC Secretary;  
Bob Shaw, CBCC Superintendent;  
Eldon Vail, DOC Secretary  
Bernard Warner, DOC Secretary  
Robert (Bob) Wright, CBCC Superintendent

(c) Response Required

Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of service of summons. A defendant who timely returns the signed waiver shall have **sixty (60) days** after the date designated on the notice of lawsuit to file and serve an answer to the complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

A defendant who fails to timely return the signed waiver will be personally served with a summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally served shall file an answer or motion permitted under Rule 12 within **thirty (30) days** after service.

(d) Filing and Service by Parties, Generally

All attorneys admitted to practice before this Court are required to file documents electronically via the Court's CM/ECF system. Counsel are directed to the Court's website, [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), for a detailed description of the requirements for filing via CM/ECF.

1 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand  
2 corner the name of the magistrate judge to whom the document is directed.

3 Any document filed with the Court must be accompanied by proof that it has been served  
4 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs shall  
5 indicate the date the document is submitted for e-filing as the date of service.

6 (e) Motions, Generally

7 Any request for court action shall be set forth in a motion, properly filed and served.  
8 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a  
9 part of the motion itself and not in a separate document. The motion shall include in its caption  
10 (immediately below the title of the motion) a designation of the date the motion is to be noted for  
11 consideration upon the Court's motion calendar.

12 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for  
13 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),  
14 motions for default, requests for the clerk to enter default judgment, and motions for the court to  
15 enter default judgment where the opposing party has not appeared shall be noted for  
16 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions shall  
17 be noted for consideration no earlier than the third Friday following filing and service of the  
18 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier than  
19 the fourth Friday following filing and service of the motion. *Id.*

20 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-  
21 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
22 immediately preceding the date designated for consideration of the motion.

1 The party making the motion may electronically file and serve not later than 11:59 p.m.  
2 on the date designated for consideration of the motion, a reply to the opposing party's briefs and  
3 affidavits.

4 (f) Motions to Dismiss and Motions for Summary Judgment

5 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil  
6 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil  
7 Procedure should acquaint themselves with those rules. As noted above, these motions shall be  
8 noted for consideration no earlier than the fourth Friday following filing and service of the  
9 motion.

10 Defendants filing motions to dismiss based on a failure to exhaust or motions for  
11 summary judgment are advised that they MUST serve a *Rand* notice concurrently with motions to  
12 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner  
13 plaintiffs will have fair, timely and adequate notice of what is required of them in order to  
14 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit has  
15 set forth model language for such notices:

16 A motion for summary judgment under Rule 56 of the Federal Rules of  
17 Civil Procedure will, if granted, end your case.

18 Rule 56 tells you what you must do in order to oppose a motion for  
19 summary judgment. Generally, summary judgment must be granted when  
20 there is no genuine issue of material fact – that is, if there is no real  
21 dispute about any fact that would affect the result of your case, the party  
22 who asked for summary judgment is entitled to judgment as a matter of  
23 law, which will end your case. When a party you are suing makes a  
24 motion for summary judgment that is properly supported by declarations  
(or other sworn testimony), you cannot simply rely on what your  
complaint says. Instead, **you must set out specific facts in declarations,  
depositions, answers to interrogatories, or authenticated documents,  
as provided in Rule 56(e), that contradict the facts shown in the  
defendant's declarations and documents and show that there is a  
genuine issue of material fact for trial. If you do not submit your own**

**evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.**

*Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their motion stricken from the Court's calendar with leave to re-file.

(g) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(h) The Clerk is directed to send copies of this Order to plaintiff.

Dated this 18th day of October, 2018.

Ronald B. Lightner

Ronald B. Leighton  
United States District Judge